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Atari Online News, Etc.
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->From the Editor's Keyboard "Saying it like it is!"

I have to admit - this has been a terrible weather week for a vacation! However, I didn't let it stop me from getting some things done nor enjoying a week off. Since my plans are up in the air at the moment for the end of the week, I thought I had better get a jump on this week's editorial which usually waits until late.

I did manage to get in some relaxation - hanging around the house on those cold and damp days in the beginning of the week. A little Diablo II was a good outlet for pent-up stress! I did get some gardening done, but mostly just getting them ready for planting once the warm(er) weather decides to stick around. Got in some golfing as I had hoped, down on Cape Cod. That was fun and relaxing. No, I didn't keep score, but Tiger Woods has nothing to worry about as far as I'm concerned! Now I'm just holding off plans to go to Maine to see my father until I hear what the weather outlook will be. I heard rumors of snow and freezing rain headed north, so I may have to postpone that road trip. We'll see in a few hours if things have changed. If I head north Friday, this week's issue may likely be late getting out.

It looks like things may be winding down - finally - with regard to the Microsoft antitrust case, as well as the HP-Compaq merger debate. Boy, things are getting nasty in those two cases! Both defendants in these cases didn't appear to help themselves out, but perhaps not as negatively as the press portrayed - especially in the HP case. I still don't know how the Microsoft case will end up, but my gut feeling is that the HP-Compaq merger will go forward as planned regardless of the case Walter Hewlett's lawyers put forth. I don't think there's enough evidence to kill that deal. Time will, inevitably, tell.

Until next time...

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PEOPLE ARE TALKING
compiled by Joe Mirando
joe@atarinews.org

Hidi ho friends and neighbors. Yep, it’s that time again. This past week just seemed to fly by. Maybe it’s just part of getting older, or maybe there’s some really weird temporal effect going on that no one has been able to put down on paper yet, but time really seems to be going faster these days. That "getting older" thing was really just red herring. <grin>

I’d like to take a minute to congratulate the 50 other members of the TEAM ATARI SETI@home search group. As of this week, we have contributed more than EIGHTY years of CPU time to the search for a radio signal from an extraterrestrial intelligence. Sure, it’s not a huge amount of time when compared to the total of the whole project (over three million users strong), but heck, there are only 51 of us. If you’d like to make it 52, then go to:
http://iosef.ssl.berkeley.edu/cgi-bin/cgi?cmd=team_lookup&name=Team+Atari
and check it out. C’mon and help us hunt for ET’s phone number!

Well, let’s get to the stuff from the UseNet

Gil Parrish asks for help in finding HSMODEM:

"I need the HSMODEM software which (I gather) replaces the serial port driver to provide faster speeds.

This software is mentioned in the Quick FAQ as an important component, along with CAB1.5, STinG, and certain other software, to get an ST on the internet. The FAQ has a link for it, but the link is bad. I haven’t found it elsewhere.

If you don’t know where it can be found, the exact name of the package would give me something better to search with."

Martin Tarenskeen tells Gil:

"Try looking for HSMODA07.LZH (or was it HSMODA07.ZIP)"

Derryck Croker adds:

"The Chapelie ftp server is the best place to look for such.

You might also be interested in the English docs for HSModem, which are available for download from my web site."

Michael Depke comes up with a URL:

"http://www.flinny.demon.co.uk/download.html"

Derryck Croker tells us that...

"Something basic is obviously escaping me, but I can’t get QED to reformat a paragraph - the menu entry is greyed out!"

Diedrich Dirks tells Derryck:

"Format Paragraph?

Look at: Options -> Local ... and select Line formatting.

(QED 4.53)"

Martin Tarenskeen asks:

"I can use my Falcon with the CT2b switched off or in Turbo mode with TOS 7.x. But I when I select TOS 4.x from the CT2b bootmenu, my Falcon crashes almost immediately. Is this mode completely useless, or am I doing something wrong?"

Derryck Croker tells Martin:

"Yes, but to be honest I've never had to use it (I did have a problem with copying files to floppy with TOS 7, but that's been sorted since).

It should boot up with the familiar Fuji logo along with the memory test and boot delay if so configured.

Have you used the Centek NVRAM resetting tool and reset all the parameters? Could be that it's become corrupted over time."

Martin tells Derryck:

"I'm having problems with the floppy sometimes. What did you do to solve your problems ?

Yes, the Fuji logo appears just fine. But after some (HDDRIVER ?) messages my system hangs with a long row of bombs. Maybe I have to change some settings with HDDRIVER, or try a different HDDRIVER version. (I now use HDDRIVER 7.71. I also have 7.8 (an official disk with a Serien-Nr herr Seimet :-)) but 7.71 worked better with my CT2b. I also tried an 8.0 demo, which also seems to work. Maybe I'll order an update, and try the fully working version."

Janka Gerhard adds:

"I think I tried that mode too when I got the CT2b but since IIRC it is the same as 7.x but without fastram access it seemed to make no sense to use it afterwards."

Mickael Pointier asks about the STEs analog joystick ports:

"My question is simple: Since the STE has two additional joystick ports with analog input, I wonder if it's possible to do any kind of signal sampling on it?

Is it possible to sample audio data, and if yes, at which frequency/range?"

Adam Klobukowski tells Mickael:

"This STE additional joystick ports look like 15-pin pc analog joystick ports, but they are not. Signals at this ports are standard joystick signal (like joystick you can hook up in STFM, AMIGA or 8bit machines). There are some additional signals for paddles, etc.

Concluding: sampling is impossible (well, nothing is impossible), but using an adapter you can hook there two additional joysticks, paddles or jagpads."

Wef Dinaina asks about finding some pictures in that amazing (for its time) format... Spectrum512:

"I'm looking for a site or ftp-archive I can download Spectrum 512 files from. I know it's old hat, but the nostalgia but grabbed me recently.

Googling (SPU, SPC, Spectrum 512) doesn't do much regarding images, for some reason, so I tried that first of course, and this just seems the right group to ask."

'Brume' tells Wef:

"Spectrum 512 (and many other gfx-prg) in on the brilliant DHS website: http://www.dhs.nu"

Nick Harlow adds:

"Or if you want an original, try:

http://www.1632-sales.zenwebhosting.com/acatalog/16_32_Catalogue_Graphics___Image_Manipulation_Software_11.html"

Well folks, that's it for this time around. Tune in again next week, same time, same station, and be ready to listen to that they are saying when...

PEOPLE ARE TALKING

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->In This Week's Gaming Section - Xbox Co-creator Resigns!
GameCube Price Cut?!
NBA Titles! 'Mr. Mosquito'!
And much more!

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Xbox Co-Creator Resigns to Start New Venture

The co-creator of Microsoft Corp.'s Xbox video game console has resigned days after the software giant conceded the unit was struggling internationally and would miss its initial sales targets, Microsoft said on Monday.

Seamus Blackley, a physicist by training who also worked in Hollywood before joining Microsoft, plans to start some sort of new venture, the details of which he will begin discussing in the next few weeks, according to his spokeswoman, Susan Lusty.

Lusty declined to discuss Blackley's plans, and, without elaborating, a Microsoft spokesman only said the former Xbox executive was leaving to "pursue other opportunities."

News of Blackley's departure comes just days after Microsoft said it would miss its fiscal year-end sales target for the Xbox by as much as 40 percent, a shortfall it blamed on weak international sales. Those weak sales led to price cuts in Europe and Australia last week.

"I think that the guy is responsible for the positioning of the product, and I think Microsoft positioned the product wrong when they launched," said Michael Pachter, an analyst at Wedbush Morgan Securities. "It's an over-engineered product."

The console has also struggled in Japan, selling just over 190,000 units in its first six weeks there, according to Japanese game magazine publisher Enterbrain Inc. By comparison, the console sold nearly 1.5 million units in its first six weeks in the U.S. last year.

Blackley worked at the video game arm of Hollywood movie studio DreamWorks before joining Microsoft as head of the company's Advanced Technology Group. Before his stint at DreamWorks, he was also a noted designer of flight simulation games.

He has been one of the Xbox's public faces from the start, even going so far as to propose to his fiance during the Xbox's launch on Nov. 15 in Times Square in New York.

A book being launched tomorrow about the history of the Xbox project, "Opening the Xbox," by journalist Dean Takahashi, features a forward written by Blackley and centers in large part on the genesis of the project through him.

The book, and Blackley's resignation, come as the video game industry is in the midst of gearing up for the Electronic Entertainment Expo, or E3, which begins on May 21 in Los Angeles.

Industry executives, analysts and observers generally believe Microsoft is likely to cut the Xbox's price from $299 to $249 or even $199 at some point this year, though they are divided as to whether such a cut will

come at E3 or later in the year, perhaps around September, a more traditional time for price cuts.

Nintendo Cuts Planned GameCube Price for Europe

Nintendo Co. Ltd. on Monday upped the ante in the hotly contested video games market by cutting the price of its GameCube consoles by up to 24 percent in Europe, two weeks before launch.

GameCube machines will go on sale in Europe on May 3 for 199 euros (US$177), down 20 percent from the earlier announced price of 250 euros, and for 129 pounds ($186.7) in Britain, a 24 percent discount.

Nintendo's move follows Microsoft's decision last week to cut the price of its Xbox consoles in Europe, putting it in line with best-selling rival, Sony's PlayStation 2, at 299 euros and 199 pounds in Britain.

The GameCube will now retail at 100 euros cheaper than Xbox and PlayStation 2 in Europe, although the latter two come with a built-in DVD drive.

GameCube will launch amid the most competitive video games console market in memory. Nintendo, Microsoft and Sony are battling for dominance in a $20 billion-plus market that now rivals the film and music industry as the favorite past-time of teens and twenty-somethings.

Nintendo plans to rollout its GameCube video game consoles in Europe in two weeks, initially shipping 500,000 units with a marketing budget of 100 million euros. The company plans to ship another 500,000 units within the following eight weeks.

Nintendo, which has already shipped four million GameCube consoles worldwide, said it had made the cut as it felt if could pass on production economies of scale to consumers.

Console makers traditionally institute a price cut within the first 12 months of launch to reignite demand but there was industry surprise at the rapidity of the GameCube cut.

"To change the price structure two weeks from launch is incredible," said Stuart Dinsey, managing editor of Games Trade Weekly MCV.

He added that Nintendo may have imposed the cut to put further pressure on Microsoft's Xbox, which has registered disappointing sales in Germany and France.

David Gocen, managing director of Nintendo Europe, told Reuters the decision was not influenced by last week's Xbox cut.

"We wanted to tell consumers that if they buy GameCube on May 3 they will be buying it at the best possible price," Gocen told Reuters.

Others suggested the move was indeed executed to put further heat on Microsoft and give GameCube ample sales momentum in the run-up to the crucial pre-Christmas period.

"Historically, there's only been room for two consoles, not three," Dinsey

said. "Obviously, this is an attempt by Nintendo to put the pressure on Microsoft and try to squeeze them out."

Gocen said Nintendo has taken 30,000 pre-orders for GameCube in the UK, and expects that number to reach 50,000 by launch. He added that the European market has become increasingly important to Nintendo, representing over 20 percent of global sales.

Microsoft's sooner-than-expected price cut, intended to shore up sagging sales of Xbox, fueled speculation of a global price war in Europe, Japan and the United States.

But Hiroshi Imanishi, head of Nintendo's public relations, explained the price cut had been under consideration for some time.

"We had originally planned to offer GameCube below 200 euros but needed to figure out specific production costs before actually announcing the price," he said.

Imanishi said the company planned to manufacture GameCube machines in Japan and China for global shipment, with the intention of boosting China production in the future to pare back manufacturing costs.

In Japan, Nintendo shipped 1.29 million GameCubes between its September 14 debut and March 31, while Xbox sold 190,092 units from a February 22 launch to March 31, according to Japanese game magazine publisher Enterbrain Inc.

Three NBA Titles Put You on the Court

For NBA fans, this is the time of the year that really matters - the playoffs.

For NBA videogame fans, this is also an excellent time. There are a number of good basketball titles on shelves right now, no matter which system you pledge your allegiance to.

Let's take a look at one for each of the current systems, and see if we can pick a winner.

Now appearing on the PlayStation 2 is Konami's version of NBA play. "NBA 2Night 2002" is a decent overall package that won't disappoint.

I found the offense to be the easiest to handle, although it can match up against the other titles, spin move for spin move. There are the key options you have to have for a complete basketball experience, including Franchise mode and create-a-player.

Graphics are good, with nicely detailed players and a great crowd. Passing is a treat; hold down the L1 button and button symbols appear over the heads of your teammates. Simply hit the button representing the player you want to get the ball and it's done.

Game play is fast and there aren't a lot of fluke steals or turnovers to tempt you to throw your controller at the wall.

Give it a B. It's a solid alternative to Sega's all-conquering "NBA 2K2."

Xbox owners should take a look at "NBA Inside Drive 2002." High Voltage Software has done a decent job of putting a solid, comprehensive package together for Microsoft’s mighty machine.

"Inside Drive" offers a wide variety of options to let you make the game yours.

The arenas are good, the uniforms are excellent and only the players themselves seem a bit like they were whipped up in some science lab. The expressions are cold, like a space alien posing as human. A 6-foot-8-inch human.

Commentary by Kevin Calabro and former star Marques Johnson is adequate, although it suffers from the repetition problem. There are only so many funny things you can say about basketball before you start tripping on your tongue. Not a problem unique to this game, of course.

I found the shooting to be inconsistent. A shot I bagged on one trip down the floor clanked like a hammer on an anvil the next. Steals are common, traveling is a plague and that 10-point run will soon be wiped out by the console’s 12-point string.

The game is also missing some of the more common sports features. No franchise mode. No make-your-own-player. On the plus side, there’s a whole page in the manual given over to "dekes," those tricky moves that get a player free for a shot or a drive.

The game’s biggest problem, however, is that Sega isn’t hogging "NBA 2K2" for its own system anymore. The premier basketball title is available for Xbox, and if you want the best, that’s it.

Not awful, not great. Give it a C+.

I tried "NBA 2K2" on Nintendo’s Gamecube. Visual Concept’s spectacular creation is even better than the last version, with improved ball handling, solid fundamentals and the best look yet for NBA hoops.

I love the perspective. When you take the ball out under the opponent’s basket, you can see the entire court, not just the half you’re on. This opens up great opportunities for passing and dunks aplenty. You’re rewarded for solid team play, but you can also shake-and-bake one-on-one, if that’s your game.

Every option you can think of is included. Adjust the speed of the game, obey or ignore NBA rules, post-ups, picks, create-a-player, franchise - it’s all here and it all works.

Graphics are excellent, including the players and the arenas. There can be only one NBA champion, and there can be only one top title. "NBA 2K2" gets an A. It’s simply the best.

All three titles are rated E, for ages 6 and up.

’Mister Mosquito’ Excels in Weirdness, Lacks Bite

Here’s the buzz on "Mister Mosquito," the PlayStation 2 game from Eidos

($50) where your job is to fly throughout the home of Kenichi and Kaneyo Yamada, and their teen-age daughter. Your ultimate goal: suck their blood.

Yes, they're good people and you'll make them itchy and miserable. Yes, they'll try to snuff out your miserable little existence as soon as they realize you are there. But you don't care. As the narrator informs you during a droning opening monologue: You're now a mosquito. It's what you do. Get over it.

I'll be the first to admit that I like bizarre things. For example, I enjoyed the 1997 Windows game "Banzai Bug," where you assume the role of an insect trapped inside the house of a high-tech exterminator. But "Bug" performed its mission with a lot more style and humor. "Mosquito" seems bland by comparison, and some elements of "Mosquito" were too weird, even for me.

One was the realization that Mr. Mosquito is a freak of nature. It's not just his immense belly, which makes you wonder if he's been sucking too much blood in the first place, or the huge mammal-like eyes, or the snout that looks like a toilet plunger. It's the simple fact that Mr. Mosquito is a mister.

In real life, only female mosquitoes can suck blood. So, in truth, he is a she. Who would have thought that cross-dressing would extend to the insect world?

At the beginning of each level -- at least the ones I got through -- your assignment is to approach the human and find the perfect spot for landing. The game doesn't let you attack any exposed area. Instead, you have to zero in on a glowing red marker. Once locked in, a press of a button allows you to zoom to the spot and land. Pressing the right thumbstick lets Mr. Mosquito plunge his (or should I be saying her?) proboscis into the skin. Moving the thumbstick in a circular motion at the proper rate brings in the blood.

If you collect enough blood by filling your belly and the vials that are hidden throughout the rooms -- avoiding the pink clouds of insecticide in the process -- you can go on to the next level.

As in real life, it's a game that can end VERY quickly. If you are detected while drinking, one swipe of the hand is all it takes to send you back to the start of the level.

But in other cases, where they see or hear you, the humans come after you. The Yamadas become lumbering giants with Godzilla-like stomps, as they try to track you down and swipe your buzzin' little butt into oblivion.

To your advantage, the controls let you flit around, making it easy to dodge the swipes of the slow-moving human hand. You can also escape to areas of the room that are inaccessible to the Yamadas, although that only buys you some time.

If you want the human to stop the attack, you have to make Mr. Mosquito fly straight into a certain part of the human anatomy. If you hit the wrong spot, you're stunned by the impact and vulnerable to being swatted. If you're successful, your victim stops and, in some cases, decides to lie down.

This is weird, but it gets weirder.

The vulnerable point for the teen-age daughter, Rena, turns out to be just above her groin. And when you hit the spot, she says, "Oooooo, bliss!" and heads for the bed to rest. I can’t begin to imagine what the developers of this game would see in a Rorschach inkblot test.

The game does have some charms. It’s fun to eavesdrop on the Yamadas. In addition, you can perform all kinds of mischief, such as whacking the remote control button and turning off the television so Mr. Yamada, who sports a hideous comb-over, has to keep getting up to fix it.

I kept turning the lights off on Rena (after all, she kept complaining that she was tired), but she insisted on putting them back on. I was disappointed when, after the third time, she didn’t run screaming from the room, convinced it was haunted. Perhaps Japanese mosquitoes do those kinds of things.

In other ways, "Mister Mosquito" is simply tiresome, especially when the characters keep saying the same things over and over. It is one game that left me scratching my head.

Video Game Channel Launches with ’Pong’ Marathon

Imagine watching a white ball bouncing back and forth across a black TV screen, 24 hours a day, for a full week.

G4, a new cable channel devoted exclusively to video games that went live on Wednesday, plans to broadcast a live game of "Pong" -- widely considered the first consumer video game -- for seven days straight.

G4, backed by a $150 million investment from cable giant Comcast Corp. , flipped the switch at 3 a.m. EDT with a total of 3 million subscribers on digital cable platforms from Comcast and Midwestern operator Insight.

The channel plans to offer 13 original weekly series, focusing on topics like sports games, gaming reviews, and hints and tricks for winning at popular video games. It is expected to have 350 to 400 hours of original content per year.

"Our mission is to capture all those elements of the video game business," G4 founder and Chief Executive Charles Hirschhorn told Reuters earlier this year.

The launch comes at a time when the video game industry is at the beginning of a multi-year growth cycle, with some analysts estimating the industry will see more than 20 percent growth for at least the next two years.

Gov. Ventura Plans Video Game Pitch

Gov. Jesse Ventura may soon become more animated than ever.

Ventura’s campaign committee, credited in 1998 with its effective use of the Internet as a campaign tool, is again exploring how to break new ground this time through interactive campaign-themed video games.

Forget the standard glossy leaflets most candidates send out. The games, on CDs or DVDs or posted on Ventura's Web site, would feature the former professional wrestler, presumably touting his political accomplishments and putting the heat on his opponents.

"There's no shortage of material for a number of games," said Phil Madsen, treasurer of the Jesse Ventura Volunteer Committee.

The Ventura game or collection of games would be entertaining, 100 percent political and distributed free to voters as campaign literature, he said. While the games are just in the talking stage, Madsen described what might emerge as "an ongoing political cartoon."

First, though, there's a potential legal hurdle: Would the games be considered campaign literature or gifts? Minnesota law prohibits a campaign from giving most gifts to voters.

Madsen has asked the state's Campaign Finance and Public Disclosure Board for an opinion, but board members said this week that the gift clause doesn't appear to fall under their jurisdiction. It's unclear, exactly, what group might have jurisdiction.

In the meantime, the video game idea is still in its talking stages, and Ventura hasn't yet been approached with the suggestion.

The governor has said he won't decide whether he'll run until the July candidate filing period, but Madsen said he wants to be ready just in case.

"I'd much rather be prepared for a campaign that doesn't happen than to be unprepared for one that does," he said.

Joseph Turow, professor of communications at the Annenberg School for Communications at the University of Pennsylvania, said the use of video games is a logical next step in the integration of politics and entertainment.

"In a crowded media environment, breaking through is what you need to do," he said. "If you can break through, particularly if they're younger voters or unaffiliated voters, it's terrific."

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->A-ONE Gaming Online - Online Users Growl & Purr!
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Jagfest 2002

Sixth annual Atari Jaguar Festival to be held Downtown St. Louis

For immediate Release:

April 17, 2002

Greg George webmaster of The Atari Times, James Garvin of OMC Games and Daniel Iacovelli Chairperson of The Atari Video Club/Jaguar Community United has agreed to host the Sixth Annual Atari Jaguar Festival (dubbed Jagfest 2k2) in downtown St. Louis, Missouri at The Mayfair Wyndham Historic Hotel. (806 St. Charles Street St. Louis, Missouri 63101. (Phone: 314-421-2500.) For the first time this event will be held on two days instead of one, Friday, July 12th and Saturday, July 13th 2002.

The scheduled time for the event is 10am to 6pm on the first day and 10am to 4pm on the second day (a full schedule of events will be announced in the days to come).

Admission cost for this event is $25.00 for those who wish to pre-pay and $30.00 for those who wish pay at the door; this cost covers for both days.

At this time table prices are estimated to be: Visitor tables: $40.00 Dealer Tables: $50.00 (extra tables are $5.00 each) (Table Fees are subject to change)

For more information On Jag fest 2k2 e-mail Greg George at greg@ataritimes.com, James Garvin at omc@omcgames.com or Daniel Iacovelli at atarivideoclub@yahoo.com or visit the Jagfest 2002 site at http://omcgames.com/jagfest/jf2k2.html (be sure to visit the Jag fest message board and post your ideas for this event.)

CCAG 2002

The Classic Computer And Gaming (CCAG) Show 2002 is on!

"We, the CCAG organizers, regret that it took so long to officially announce the CCAG 2002 Show. However, we are also very glad that the CCAG 2001 Show did NOT take place after September 11th, 2001. Had CCAG 2001 taken place after 9-11, we would have had to cancel. Because we had used a National Guard Armory for the previous two CCAG’s, we were not able to rent the Armory again after the events of 9-11. We have been able to locate and secure a facility for CCAG 2002! We again apologize for the delay, as we were only able to know with certainty, in the past several days. See you all at the CCAG 2002!!!"

CCAG 2002 Staff

The Classic Computer And Gaming Show 2002 will be held on May 25th, 2002 from 8AM till 2 PM. Vendor setup is on the 24th from 5:30PM till 9PM, and from 6:30AM till 8AM on the 25th. Show location is at the St. John Lutheran Church, 11333 Granger Road, Garfield Hts. Ohio, 44125.

Here is our own site for more information and current status of vendors and attendees.

www.ccagshow.com

Table rental is $5 this year, and admission is only $2. The admission fee will also allow you to be eligible for a drawing at 1PM, the 25th, for an Arcade machine! (You will need a way to take the machine home with you!)

The web site, www.ccagshow.com, has site info, table layouts, map info, etc.

We hope to see you there at the CCAG 2002!

CCAG will have a limited number of a CCAG-exclusive release for collectors!!!

www.geocities.com/gameagain_2000/ccag.html

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A-ONE's Headline News
The Latest in Computer Technology News
Compiled by: Dana P. Jacobson

Gates Testifies in Microsoft Case

For the first time in Microsoft's four-year antitrust battle, Bill Gates took the witness stand Monday and personally chastised states for seeking penalties he said would cripple the American software giant.

With a mix of computer slide shows and short, calm answers, Gates sought to rebut the arguments of nine states that have asked a court to further punish Microsoft for operating an illegal monopoly that hurt competitors and consumers.

Gates offered no apologies for his company's business practices. Instead, he portrayed Microsoft's flagship Windows software as the epicenter of innovation in America's computer revolution - a revolution that would be stifled by the states' proposed penalties, hurting consumers and the wider industry.

"The (remedies) would turn back the clock on Windows development and effectively freeze it there," Gates testified at one point, delivering in person the warnings that Microsoft has made for months in court documents.

He said the health of the personal computer "ecosystem depends in substantial part upon the continued health of and improvements to Windows."

At one point, he suggested Microsoft might need to lay off half of its 15,000 workers or pull Windows from the marketplace as fallout from the proposed penalties.

"The practical effect ... would be to cripple Microsoft as a technology company," Gates wrote in 150 pages of written testimony that was submitted along with his appearance.

Gates' performance Monday contrasted sharply from his 1998 videotaped testimony that became a key piece of evidence in the first phase of the antitrust trial. Gates was criticized for appearing fidgety, evasive and combative in that tape.

On Monday, he spurned his customary casual attire for a traditional blue suit and purple tie and brought his wife to the courtroom.

Under intense questioning by states' lawyer Steven Kuney, the Microsoft chairman occasionally chuckled before taking issue with definitions or assumptions. He was to return Tuesday for more questioning.

Gates began his testimony with a computer-generated slideshow. He demonstrated how, if the states successfully persuaded a court to force Microsoft to remove the Internet Explorer Web browser, essential components of Windows would stop working.

"This shows that if you remove this block of code, other functions are degraded in the most extreme way. They no longer work," Gates said, referring to the removal of the Explorer software.

In his written testimony, Gates exhaustively countered every argument the states had made in favor of penalties. During cross examination, the states' lawyers sought to turn his words to their advantage.

At one point, Kuney challenged Gates' assertion that Microsoft does all it can to disclose technical information so software developers can write programs that work well with Microsoft products.

The lawyer cited an internal memo in which Gates instructed his employees to stop trying to make sure Microsoft Office documents would work with rival Web browsers.

"We have to stop putting any effort into this," he said in the December 1998 e-mail. "Anything else is suicide for our platform. This is a case where Office has to avoid doing something to (destroy) Windows."

Confronted with the memo, Gates said he believed it was inefficient for engineers to spend their time on an effort that was "not making any progress."

Gates appearance came a little over two years after a court concluded his company operated as an illegal monpoly that thwarted competitors and hurt consumers.

The Justice Department and nine other states settled the case last fall and their deal with Microsoft is awaiting court approval. The nine states remaining in the case want U.S. District Judge Colleen Kollar-Kotelly to impose tougher penalties than those in the settlement.

Those penalties include requiring Microsoft to share with competitors technical information and blueprints about how some of its most popular software works and creating a modular version of Windows that could incorporate other software makers' products.

In his written testimony, Gates argued such penalties would cause "a massive transfer of Microsoft's intellectual property rights" to competitors, leaving no motivation for Microsoft to continue being innovative.

And he said the consumer would ultimately pay the price.

Gates also argued the penalties would allow competitors to create Windows clones. He named five companies that have assisted the states' lawsuit

that he said could create the clones: AOL Time Warner, Sun, Gateway, Novell and Oracle.

States that rejected the government’s settlement with Microsoft and are continuing to pursue the antitrust case are Iowa, Utah, Massachusetts, Connecticut, California, Kansas, Florida, Minnesota and West Virginia, along with the District of Columbia.

Gates: Remedies Would Bar Behavior

Although he’s highly critical of the remedies proposed by nine states and the District of Columbia in his company’s antitrust trial, Microsoft Chairman Bill Gates acknowledged Tuesday that some of the restrictions would have prevented the company from engaging in behavior that an earlier court deemed illegal.

In cross-examination during his second day on the witness stand, Gates reluctantly said the proposed remedies would not have prevented Microsoft from threatening to cease development of Mac Office if Apple Computer had not installed Internet Explorer on new computers.

Similarly, Gates said, Microsoft would not have been able to bully Intel into stopping development of software that could have competed against Windows. Both actions were found to be illegal during the trial phase of the four-year antitrust case.

Gates, though, added that the settlement Microsoft reached with the Department of Justice also would have restrained the company in a similar manner.

Gates further testified that Netscape’s Internet browser and Sun Microsystems’ Java software represented a competitive threat against Windows. In his written testimony, submitted Monday, Gates wrote that the two technologies "supposedly" posed a competitive threat.

In 2000, a federal court found that Microsoft violated antitrust laws by using its heft in operating systems to capture the market for Web browsers. Following the conclusions and a series of appeals, the Redmond, Wash.-based software giant and the Department of Justice hammered out a settlement agreement in November 2001.

Rather than sign on to the settlement, nine states and the District of Columbia decided to pursue the case and proposed their own remedies. Among other restrictions, this group is seeking a proposal that would prevent Microsoft from retaliating against companies that adopt competing technologies and would require Microsoft to support a wider variety of Windows.

Like previous witnesses, Gates first submitted written testimony and then took the stand to be cross-examined orally. Also like some other witnesses, Gates made statements that have seemingly dented his credibility.

When he first took the stand Monday, Gates was the picture of professorial cool, holding in his temper, which had hurt him earlier in videotaped depositions.

Gates remained highly critical of the states’ settlement proposal,

however, calling it ambiguous and "impossible" for Microsoft to follow.

The company would be forced into a game of "endless second-guessing" every time it changed a product to determine whether it was violating the law, Gates said. Design efforts in the early stages of a product might later inadvertently hurt third parties and be deemed violations of the law under the proposal, he said.

"We're allowed to make mistakes," the billionaire said.

Microsoft's attorney, Dan Webb, strongly objected to some of the questioning directed at Gates. "We are using the word 'supposedly'...to re-litigate the entire Netscape and Java case," he said at one point. But his objection was overruled.

Steven Kuney, the attorney for the states, also asked Gates whether older versions of Windows should be made available to consumers at a lower price.

"That's not a choice you want consumers to make, is it, Mr. Gates?" Kuney asked.

States Dispute Gates' Windows Claim

Microsoft Chairman Bill Gates said Wednesday the company has not tried to figure out how to remove elements of its Windows operating system, because the task would be impossible.

But Steven Kuney, a lawyer for nine states seeking tougher penalties against the software giant, pointed to a product Microsoft already offers, which lets companies choose which components they want to put into Windows and automatically adds other, required portions.

The product, mentioned periodically during the case, is Windows XP Embedded. XP Embedded is made for devices like television set-top boxes and automatic teller machines, although it is possible to configure it as a full-featured desktop operating system.

The product contains the "same binary files as Windows XP Professional. Therefore, it supports all the same features," the program says in its user guide.

Microsoft uses its licensing terms to bar consumers from running XP Embedded on personal computers.

In the configuration program, a user can choose to add or remove the Internet Explorer Web browser, Windows Media Player music and movie software, or a long list of other features. In consumer versions of Windows XP, removing Internet Explorer is not possible.

"There's no suggestion at least at this point this is a modified or truncated version of Internet Explorer, is there Mr. Gates?," Kuney asked.

"No, there is not," Gates replied.

Under questioning, Gates admitted that Microsoft's popular Office business software could be configured to work on XP Embedded.

Andrew Appel, a Princeton University computer scientist, testified for the nine states suing for antitrust violations. Appel suggested several ways Microsoft could comply with their demand for a "modular" version of Windows.

The issue stems from how different portions of Windows are reliant on each other. If one piece is removed, such as the part of the Internet Explorer Web browser that makes Web pages appear, other features like the Windows Help system would break.

But XP Embedded recognizes those dependencies and adds the vital functions.

The states want to let computer manufacturers remove Internet Explorer and other features of Windows and substitute competing software. That, the states say, would reduce Microsoft's advantage, give consumers more choice and let software developers make many different kinds of programs.

The Justice Department and nine other states settled the case last fall and their deal with Microsoft is awaiting court approval. The states remaining in the case, along with the District of Columbia, want U.S. District Judge Colleen Kollar-Kotelly to impose tougher penalties than those in the settlement.

The penalties sought would include requiring Microsoft to share with competitors technical information and blueprints about how some of its most popular software works and sell the rights to translate its Office business software to other operating systems.

Hewlett Attorneys Claim Deal Deception

Lawyers for dissident Hewlett-Packard Co. shareholder Walter Hewlett cited internal company memos and personal documents in court Tuesday as evidence that executives deceived investors about the financial prospects of HP's proposed $19 billion purchase of rival Compaq Computer Corp.

In opening statements in Hewlett's attempt to overturn a shareholder vote approving the deal, Hewlett lawyer Stephen Neal claimed HP executives knew as late as a few days before shareholders were set to vote on the deal last month that internal projections showed the financial benefits would fall well short of what HP publicly touted.

A personal journal entry Compaq CEO Michael Capellas made in late February or early March was headed "sobering thought" and said "at our course and speed we will fail."

At the same time, a select group of HP and Compaq executives held regular meetings on the merger's progression and consulted a chart that showed the widening gap between current projected financial benefits of the merger and what was promised when the merger was initially proposed to shareholders in an SEC filing. The series of charts was presented to the judge Tuesday, but was kept from view of the courtroom to protect company secrets.

Neal also presented an e-mail from a member of HP chief financial officer Bob Wayman's staff who had conducted one internal study on the financials. The message to Wayman said "The attached is a frightening reality check.

... I see little realistic upside and I am not alone. I sincerely hope we all start acknowledging the realities soon."

Neal said HP's internal projections showed the deal would likely reduce the combined company's earnings per share by as much as 25 percent rather than boost them, at least in the near term. He also suggested that HP suddenly found a way to make the numbers work once the judge ruled to let Hewlett's suit go to trial.

HP chairwoman and chief executive Carly Fiorina took the stand first, and insisted that the company's original projections were based on the best estimates at the time and that it was known that they were subject to change.

Speaking in a voice so soft, she was asked to speak up several times, Fiorina testified that she did not disclose the updated projections to shareholders because "it would be irresponsible to do so." She explained that the reports are not a full picture of the company's targets.

Fiorina testified for more than 4 1/2 hours and was to resume Wednesday morning.

The official certification of HP's shareholder vote on the deal, first announced seven months ago, is expected within days, but Hewlett is asking a Delaware Chancery Court judge to invalidate those results.

Hewlett first fought the deal in a public relations battle with HP on the grounds that buying Compaq was too risky and would bog HP down in the weak personal-computer market at the expense of its profitable printing division.

In his lawsuit, he contends HP won its slim majority in the March 19 shareholder vote by threatening to take business away from at least one big investor, Deutsche Bank, in addition to hiding unflattering information about HP and Compaq's ability to carry out the merger.

Neal claimed Deutsche Bank was doing work for HP to help the company with "market intelligence" and was promised $1 million bonus if deal was approved. That payment was approved by HP chief financial officer Bob Wayman without HP chairwoman and chief executive Carly Fiorina's knowledge, Neal told the court.

Fiorina testified that she was aware there was some kind of business arrangement, but didn't know anything about a related payment to Deutsche Bank.

Fiorina personally thanked head of Deutsche Bank for "going to bat for us" with the bank's proxy committee, Neal said, citing a voice-mail, which Fiorina ended by saying, "I look forward to doing business with you" in the future.

Hewlett-Packard has denied wrongdoing, and Deutsche Asset Management has said it merely voted the shares it controlled in the best interests of its investment clients.

HP attorney Steven Schatz said the signoff was typical for any conversation with an investment bank and said there are other memos showing the merger plan was ahead of schedule.

"The shareholders vote should be honored," Schatz said. "Management

integrity has been impugned on the flimsiest of bases."

In a scene normally reserved for popular sporting events and concerts, about 100 people - mostly attorneys, investors and journalists - lined up outside the courthouse. Some had paid others to stand in line overnight to ensure they would get inside the courtroom.

"This is a such high profile case, everybody’s afraid they’re not going to get a seat for the trial," said Rob Campbell, 27, an employee at a local courier service who was paid $20 an hour by a law firm to line up outside the courthouse at 3 a.m.

The trial, being heard by one of the court’s expert business judges and not a jury, is expected to last three days. The Delaware Chancery Court in Wilmington, which has jurisdiction over the governance of companies that are incorporated in the state, including HP.

A preliminary tally released last week by an independent proxy certifying firm found that 51.4 percent of HP shares were voted for the Compaq deal, and 48.6 percent came out against. With more than 1.6 billion shares voted, HP beat Hewlett by 45 million shares - a margin of less than 3 percent.

Hewlett hopes Chancellor William Chandler III negates the vote either by voiding certain investors’ shares or by determining that HP corrupted the entire process by buying votes.

Hewlett believes Deutsche Asset Management originally voted 25 million HP shares against the deal but switched 17 million just before the shareholder meeting, which came days after Deutsche Bank helped arrange a $4 billion credit facility for HP.

Barring court intervention, Fiorina said HP is prepared to close the deal May 7, and that job cuts resulting from the merger likely will be around 13,000 instead of the 15,000 HP previously anticipated. Hewlett had said 24,000 might be necessary.

HP’s Fiorina Testifies as Trial Wraps Up

Hewlett-Packard Co. Chief Executive Carly Fiorina conceded in court on Thursday she told Deutsche Bank asset managers their vote in favor of her company’s hotly contested plan to buy Compaq Computer Corp. was of "great importance to our ongoing relationship."

The comments came on the last day of the three-day trial here in which Walter Hewlett, a son of an HP founder and dissident board member, seeks to throw out a March 19 shareholder vote in favor of the $18 billion deal to buy Compaq.

The trial was a shorter version of the extended battle that Fiorina and Walter Hewlett have fought since late last year in the press and in documents to shareholders after Hewlett began soliciting votes against the merger.

He says the deal would create a company too large to grow quickly while Fiorina says the combined companies can compete more effectively.

The trial comes as HP is trying to close that acquisition of Houston-based Compaq. Last week, HP said that it had won the vote by a sufficient margin and during testimony here, executives said they planned to launch to the combined company on May 7.

Chancellor William Chandler, who requested post-trial briefs instead of closing arguments as part of his effort to limit the trial to three days, said he expected to deliver a response "very quickly."

Thursday morning, Walter Hewlett's lawyer Stephen Neal presented Fiorina with a transcript of a conference call she and other HP executives held the morning of the vote to convince Deutsche Bank's asset management team to change their stance and back the deal.

Neal has argued that Deutsche Bank asset managers, who did switch their vote and back the merger that day, did so under pressure of losing future investment banking business.

"This is obviously of great importance to us as a company and it's of great importance to our ongoing relationship," the transcript said. "We very much would like to have your support here. We think this is a crucially important decision for the company."

Fiorina, in a testy exchange with Neal, read from the transcript. She later said she was trying to convey that she appreciated Deutsche Bank's time and hoped to work with them again, pointing out the bank is a large customer of HP.

HP played down the transcript, which caused investor confidence in the deal to falter early Thursday when it was first revealed. And after the trial ended, HP said that it believed Walter Hewlett had failed to prove his allegations that the Palo Alto, California computer and printer maker had coerced Deutsche Bank or misled investors.

"We clearly believe the plaintiffs failed to prove their claims. HP's management and Board members demonstrated over and over again that they acted properly and consistently in the interest of shareowners. We look forward to the Chancellor's ruling and will continue to prepare for the launch of the new HP," HP said in a statement.

Walter Hewlett, who testified for about an hour and a half on Wednesday, declined to comment after the trial.

One lawyer for a Delaware-based firm who attended the trial said that he believed that HP had probably come out ahead because Walter Hewlett's side had failed to prove that HP management should have disclosed internal business group estimates to its shareholders ahead of the March 19 vote.

Walter Hewlett said those estimates, which showed group estimates for 2003 revenue and operating profit below HP management's numbers, should have been disclosed.

"I think the Delaware courts are probably going to be reluctant to set a precedent that unreliable, internal information in any contested merger is required to be disclosed," Mark Saltzburg of Morris, James, Hitchens & Williams LLP said.

"The real question is whether this rises above the material threshold," he added.

In addition, he said there didn’t appear to be enough to prove coercion regarding Deutsche Bank.

Deutsche Bank has said its asset managers had not considered Deutsche’s banking business when deciding how to vote its shares.

Deutsche Bank on Tuesday said it had been hired in January as a "secondary" merger adviser to Hewlett-Packard.

Asset managers and investment bankers working at a single firm are supposed to work separately, although the so-called "Chinese walls" have come under heightened scrutiny lately.

The latest courtroom development added concern about the chances for the deal’s success into the market.

The deal’s spread -- the difference between where the deal values Compaq shares and where the market currently values them -- widened to 7 percent from 5 percent on Thursday morning after Fiorina’s testimony. The spread then narrowed again during later trading Thursday to close at about 5 percent.

The deal spread, which is a reflection of investor thinking about the odds the deal will go through, had been as wide as 26 percent in the weeks leading up to the vote.

Judge Considers Hewlett’s Complaints

Walter Hewlett’s lawyers dropped a few big bombshells during the three-day trial over the HP heir’s lawsuit against Hewlett-Packard Co. But were they enough to bring down the biggest high-tech merger in history?

A Delaware judge began considering that question Thursday, and promises to rule soon on Hewlett’s request that he overturn the March 19 shareholder vote that apparently gave HP approval to buy Compaq.

HP executives and lawyers left expressing confidence they had knocked down Hewlett’s allegations that HP misled investors about the chances the Compaq merger would generate its promised financial benefits.

They also predicted Hewlett would fail to convince the judge that the company got Deutsche Bank’s investment division to vote for the deal by threatening to withhold future business.

"The evidence produced in that courtroom showed Hewlett-Packard acted totally properly, and this case was without merit," HP attorney Steven Schatz said outside court Thursday.

Wall Street seemed to agree, dramatically reducing the "spread" - the difference between Compaq’s stock price and the price implied by the terms of the acquisition.

Still, some observers cautioned against predicting victory for HP.

"In business trials there are very few smoking guns. They really don’t exist," said Charles Elson, director of the Center for Corporate Governance at the University of Delaware. "It’s more like a series of

facts and what kind of picture (the judge) can put together with them. You can assemble them in a lot of different ways."

Regardless of how the judge rules, Elson said, "I don't think anyone comes out of this thing overwhelmingly happy with the picture that got painted here."

Indeed, there were some disturbing allegations.

In addition to the voice mail that surfaced before the trial in which HP chief Carly Fiorina suggested doing something extraordinary for Deutsche Bank, she was recorded in another conversation telling Deutsche money managers their vote was "of great importance to our ongoing relationship."

She said "extraordinary" referred to the last-minute presentation HP made to sell the deal, and called the "ongoing relationship" remark a normal signoff for a conversation with an investment bank, especially one that buys a lot of equipment from HP.

The deep ties between the bank and the company also became apparent when chief financial officer Bob Wayman acknowledged Deutsche Bank provided "market intelligence" during the proxy fight for $1 million, with a $1 million bonus if the shareholders approved the deal.

Hewlett lawyer Stephen Neal pointed out that an HP proxy solicitor wrote on a chart that HP had a "carrot" to use in lobbying Deutsche Bank. Exactly what that referred to was not made clear. Fiorina denied ever seeing the "carrot" notation.

Neal also revealed that in an internal call that was recorded, Deutsche's chief investment officer told the proxy team that controlled Deutsche's vote on the deal: "You may or may not be aware we have an enormous banking relationship with Hewlett-Packard."

A preliminary tally released last week found that 51.4 percent of HP shares were voted for acquiring Compaq, with 48.6 percent against. That amounts to a lead of 45 million shares - which means Chancery Court Judge William B. Chandler would have to do more than erase Deutsche Bank's 17 million votes to overturn the deal.

To that end, Hewlett's team also tried to show that HP corrupted the entire proxy fight by refusing to release updated internal projections showing the merged companies falling far short of their publicly disclosed financial targets.

Hewlett's side introduced internal memos from Compaq chief financial officer Jeff Clarke calling the projections "ugly" and "a disaster" and saying the integration team had "a mile to go."

And a personal diary entry by Compaq CEO Michael Capellas said he found it sobering that HP and Compaq were about to embark on a historic deal for the industry, and noted: "At our course and speed we will fail."

But Fiorina and Wayman testified that the documents showing the shortfalls were taken out of context, and drawn up by HP and Compaq managers who intentionally set low targets they knew they could beat.

Clarke testified Thursday that his nasty-sounding comments were merely motivational messages, and said he is as confident as ever the merger can be a financial success. For example, $3.5 billion in cost savings are

possible by 2004, well ahead of the publicly touted figure of $2.5 billion, Clarke said.

Walter Hewlett contended that HP not only failed to disclose the weak internal projections to shareholders, but to its board. That notion was dismissed by the trial's final witness, Boeing Co. chairman and CEO Phil Condit.

"I have never participated in a board," said Condit, who has been an HP director for four years, "that was more fully informed."

Network Associates Accounting Woes Kill McAfee Deal

Network Associates shares tumbled Wednesday, dropping more than 20 percent to US$19, as the security company withdrew its $224 million offer to purchase the 25 percent of McAfee.com it does not already own.

NA canceled the offer, which it made in early April, after a check of its books during a tax filing found accounting errors that might compel the company to restate its 1999 and 2000 financial results. The company noted that it believes only those two years' earnings will be affected.

Under terms of the proposed purchase, McAfee shareholders would have received 0.78 of a share of Network Associates common stock for each Class A share of McAfee.

The company said it called off the offer, which was set to expire Thursday, because it believes McAfee shareholders deserve full disclosure.

In a conference call, McAfee CEO Srivats Sampath told analysts that Network Associates' withdrawal "in a nutshell-means-nothing," and that day-to-day operations will not be affected.

But the "no-go" already has had some effect. McAfee's shares dropped precipitously when news of the deal's demise became public, falling by 26 percent to $13.67.

Network Associates ended the first quarter of 2002 on March 31st on an upbeat note, with consolidated net revenue of $220.7 million and net earnings of $15.8 million, or 10 cents per share.

At the time, NA chairman and CEO George Samenuk said, "Our focus is paying off, and customers are voting with their dollars. We've made a lot of progress and are aggressively moving forward toward the billion-dollar threshold and beyond."

But questions regarding its accounting practices continue to hound the company.

Network Associates' books are already under scrutiny by the U.S. Securities and Exchange Commission, and the company has been downgraded by some analysts as a result.

The ongoing SEC investigation centers on the company's year 2000 practice of booking revenue when products were shipped to distributors, rather than when customers actually bought the products.

The company has launched its own internal investigation of the latest accounting errors.

EU Unveils Plan to Fight Hackers, Cybercrime

The European Commission unveiled new proposals on Tuesday which could send Internet hackers and spreaders of computer viruses to jail for years.

Industry and security experts welcomed the proposals, but said more needed to be done to get companies, cautious of bad publicity, to report Internet attacks and to boost law enforcement resources in the fight against cybercrime.

Presenting the proposals, European Justice and Home Affairs Commissioner Antonio Vitorino said there was a clear link between organized crime and Internet attacks.

"There is clearly a mafia approach. There have also been sophisticated organized attempts to steal substantial sums from banking services," he said.

The draft law seeks to harmonize existing national legislation in the 15-nation European Union (news - web sites) and would require backing from EU governments before coming into force.

It defines hacking as gaining unauthorized access to an information system with the intent to cause damage or for economic gain.

It also targets anyone who sends computer viruses such as the infamous "I love you" virus -- which caused major information system breakdowns across the world in 2000 -- as well as other types of destructive software such as "logic bombs," "worms" and "Trojan horses."

If approved, the law will lead to prison sentences of at least one year for acts of cybercrime and at least four years in attacks that caused physical harm, large economic losses or gains, or that involve an organized crime network.

The proposal also requires member states to set up a round-the-clock information exchange system for cybercrime attacks.

Neil Barrett, a Internet security expert, said an effective fight against cybercrime relied on additional factors.

"Victims need to report the attacks, the police need to be prepared to investigate these attacks," said Barrett, who is technical director of Information Risk Management, a London-based security consultant firm.

Many incidents of hacking are believed to go unreported by companies and government bodies due to the difficulty in tracking the culprits and the embarrassment of admitting vulnerability.

One industry victimized by organized hack attacks is the online gambling industry, where hackers have managed to crack servers, corrupt games and rack up winnings worth millions of dollars, according to industry and security experts.

The European Information Society Group, EURIM, an industry lobby group said that while the proposals would help in the fight against cybercrime, more cooperation between law enforcement and the industry was needed.

"Clarification of the law is most welcome," said Philip Virgo, secretary general of EURIM. "But (it) will not achieve results without greatly improved cooperation between industry, which is under regular attack, and law enforcement."

FTC Shuts Down ’Spam’ Scam That Promised Prizes

The U.S. government said on Wednesday it had shut down an e-mail scam that promised free video-game consoles but instead delivered a connection to a pornographic Web site that charged $3.99 per minute.

The case is one of the most egregious examples yet of the deceptive junk e-mail known as "spam," the Federal Trade Commission said.

According to the FTC, Internet users received an e-mail message saying they had won a Sony PlayStation 2 in a sweepstakes contest sponsored by Web portal Yahoo Inc . Those who responded to the message were directed to a bogus Yahoo page that instructed them to download a program that would allow them to claim the prize.

The program then connected them to a pornographic Web page that secretly charged them $3.99 per minute through a 1-900 telephone line, the FTC said.

"This case involves ’bait and switch’ of the worst kind," said Howard Beales, head of the FTC’s consumer-protection division. "The spammers promised a product that’s particularly attractive to kids. They delivered a product that’s offensive to many adults, and totally inappropriate for kids."

A Nevada court has temporarily shut down the operation and frozen its assets pending a preliminary hearing next Monday, the FTC said.

The consumer-protection agency will seek to recover the $11 million that the operation took in between May and December of last year, Beales said. Some of that money has already been refunded by ATT National Communications Team Inc.; LO/AD Communications Corp.; and Nicholas Loader.

An attorney for the defendants has not yet stepped forward, the FTC said.

Online Storage: Risky Move For Your Files

Until late last year, Debbie Lander was a big fan of online storage.

Lander paid $19.95 a year to keep photos of her custom embroidery at PhotoPoint.com. But shortly before Christmas, the North Prairie, Wis., resident ran into what she thought was a server snag: She was repeatedly unable to access the PhotoPoint site.

Only after searching Internet message boards did Lander discover that

PhotoPoint had shut down without notifying its 1.5 million customers.

"I basically had to start over from scratch," said Lander, who used the site for years to help sell her embroidery online. She became doubly mad when PhotoPoint later said it would release files--if the owner paid $25. "To me, that’s really deceitful," Lander said.

The dot-com demise has left a trail of wreckage; once-hot companies are shutting their doors and auctioning off foosball tables, and former product managers are assembling triple macchiatos at Starbucks. Among the fallen are numerous online storage companies that have gone belly-up or shut down consumer services, adding more victims to the pile: people whose files have evaporated like so much dot-com paper wealth.

But in the largely unregulated world of the Web, consumers have little or no remedy when it comes to getting their files back.

"There isn’t a great deal you can do about it," said Ira Rothken, a lawyer who has successfully argued on behalf of consumers against credit card companies that accepted online gambling charges, among others. "Usually when a company shuts down, it doesn’t have any money. In most instances, a person is out of luck."

Nearly seven years after Netscape Communications went public and the masses began discovering the Internet, policies intended to make the Web safe for businesses are looking increasingly dated. Millions of people head online as part of their daily routines and entrust bits of their lives to cyberspace. Yet some are beginning to wonder whether rules aimed at fostering e-commerce have created a double standard for consumer protection, with regulators turning a blind eye to online practices that no one would stand for in the real world.

High-profile failures have many people calling for federal regulation, but such recourse may be long in coming. For now, legal experts say, most companies are protected by sweeping terms-of-use contracts that consumers agree to before uploading files or saving messages.

In addition, defunct companies frequently have no assets that customers can lay claim to, particularly when they are looking to replace something that holds personal but relatively low monetary value.

Last summer, several online warehouses reached the end of the road after burning through their cash, forcing customers to scramble to retrieve their files. Others abandoned free services and started to charge customers for storage. But in most cases, it was too late.

Some companies that cut off free consumer storage, including Myspace.com and i-Drive, gave customers a few days to download their files. Other sites, like PhotoPoint, sent no warning at all.

The rapid death spiral of consumer storage caught many customers off guard. People who didn’t check e-mail during the critical download period or didn’t back up their records lost them.

When high-speed Net access provider Excite@Home closed its doors earlier this year, its cable partners became the exclusive providers of broadband service to its 4.1 million customers. The transfer caused massive disruptions in Internet and e-mail service, and some people were unable to access archived or forwarded e-mail for several weeks. Complaints about customer service ensued when the cable partners directed questions about

old mail to Excite@Home, which declined to say whether people would eventually gain access to archived mail.

Rothken said he’s received a lot of e-mail from people who’ve lost files and messages after a dot-com company went under. He said that concerns escalated when Excite@Home shut down, leaving people worried they would lose e-mail access and anything stored in their mail folders.

Regardless of how the Excite@Home shutdown shakes out, legal sources said that in general, companies include contract language in their customer relationships that makes it relatively easy for them to walk away scot-free.

"Usually, these organizations have click-through agreements that absolve them of a lot of liability," said Neil Smith, a lawyer with San Francisco law firm Howard Rice.

Most of the agreements warn customers that the storage company isn’t responsible for preserving files should it go out of business--a prospect that may have seemed unthinkable during the dot-com heyday, as the online storage phenomenon was sweeping the Web and attracting millions of customers.

For example, in July of last year, just as PhotoPoint’s then-President Dale Gass was telling customers that "recent changes at PhotoPoint.com ensure a long and stable future for the site and your photos," the company’s terms-of-use agreement declared that "materials in and operations of this Website are provided as-is and there is no warranty made that they will be free from errors, interruptions, or loss of data."

These days, Gass says that notifying customers was impossible because the company was in a severe financial crunch.

"Announcing to the members we would be shutting down was not a viable option, as it would have created such a crush of traffic it would have crippled our bandwidth and servers, as well as run up significant additional networking chargesthat we knew would never be paid," Gass told CNET News.com.

Legal issues surrounding the storage of online files or photos differ from those dealing with the warehousing of physical items, such as those sitting in a paid storage shed along the highway. For example, storage landlords cannot avoid liability if damage or loss results from their own negligence, even if they specifically spell that out in a contract.

What’s more, a warranty on a parking-garage ticket saying that the company isn’t liable for loss under any situation probably wouldn’t hold true if a parking attendant were to give his friend the keys to your car so he could steal your stereo.

"There are things you just can’t contract your way out of," said David Maher, a lawyer with Miami-based law firm Harke & Clasby.

But online, the gray areas are wider. For one, digital copies are much easier to duplicate--and therefore back up and replace--than, say, your great grandma’s antique dresser. Furthermore, many people have little sympathy for people who didn’t back up their files.

Because online storage is so new, there’s little legal precedent for consumers to pin potential lawsuits on. In addition, pursuing legal action

is expensive and time consuming.

Those who do decide to head down a legal path have a few choices. They can sue under their state's unfair business practices act. However, even if they can identify a defendant--a challenge once a company has gone bust--and even if they win, they still face the problem of extracting monetary damages from a defunct company. In most cases, they'll have to get in line behind all the other creditors pursuing the company through bankruptcy action.

Class-action lawsuits are also an option, but plaintiffs' attorneys would need to find numerous other victims of similar circumstances--and even then, how do you put a price on a lost photo of your family's summer trip to Thailand?

For many consumers, it's not the money they're after--it's their files.

As storing files on third-party Web sites becomes more popular, consumer advocates say, companies that want to survive are going to have to reassure consumers that their files are safe.

Jamie Love, director of Ralph Nader's Consumer Project on Technology, said this is one area where he'd like to see some regulation. "The idea would be for a very minimal approach to make it clear for people so they could make better decisions," he said.

Love said his group has received several complaints about the issue, but it has yet to take up the cause. He thinks the problem could be alleviated if companies were to give more information to consumers.

"I like starting out with a light touch," Love said. "An industry code of conduct would be helpful."

For example, sites could be required to spell out the site's liability through an easy-to-understand agreement; have a set way of notifying consumers when their files are at risk; and give people a standard amount of time to retrieve their files.

PhotoPoint's Gass said he doesn't think official regulations are needed, but that a consumer education campaign and industry-backed guidelines could solve many of the problems. Gass said he had no idea that so many people kept the only copy of their photos on the PhotoPoint site.

"The digital imaging industry, including PhotoPoint, has not done a good job educating people about backup and security of digital content," Gass said. "Just like people would not leave their previous film negatives at a store, but instead would keep them safe in a closet at home, similarly, people should always keep copies of any valuable digital data safe at home as well."

Meanwhile, online storage companies continue to receive mixed reviews from consumers.

Mark Wyatt called his divorce from free online storage company Myspace.com "amiable," saying he used the site for backup and was able to retrieve his files.

"Don't expect something that's free to last forever," he wrote in an e-mail to CNET News.com. Representatives of Myspace and i-Drive did not return requests for comment.

Other consumers were less sanguine, especially those who paid to store their files.

After PhotoPoint’s demise, Nanette Gallas spent hours reprogramming her gift and collectible-selling site so it would point to another server containing photos of her goods.

Although Gallas kept digital and physical copies of many of the photos she stored on PhotoPoint for an annual fee of about $10, she’s angry about lost time and lost business. Gallas said pictures of her gifts were unavailable to potential online buyers for a couple of weeks when she didn’t know whether PhotoPoint was gone for good.

"They screwed us over, that’s what they did," she said.

Gallas, who lives in Cheney, Wash., also lost a photo album she had compiled containing photos of her deceased brother and her parent’s 50th wedding anniversary.

Like many victims of online storage failures, Gallas is frustrated about her lack of recourse.

"The same business laws that apply to any business you can walk into should apply to businesses on the Web," she said. "The fact that they’re selling you this service and then turning around and telling you ’We’re not responsible for anything’ is just abhorrent."

eBay To Cancel Customer Service E-mail

eBay is quietly canceling a much-used e-mail address, which has some members worried.

Next month, the online auction giant will close its direct e-mail link to SafeHarbor, its department that responds to questions about suspicious activity on the site or specific fraud complaints. Instead, eBay will direct members to an online form, which categorizes their problems and links to related help pages.

The company has not posted a notice about the change on its announcements board; instead it is notifying customers who send e-mail to the safeharbor@ebay.com address.

"On May 15, 2002, this e-mail address will no longer be available," the company said in an automated reply to a member who e-mailed the SafeHarbor address. "Instead, all SafeHarbor queries should be sent using our online Contact Rules & Safety Web form."

But here’s the rub. Some members fear that because of the way the form is set up, eBay is limiting members’ ability to report fraud or rules violations.

"It’s incredibly disgraceful that they’re doing this. They keep shutting down your means of getting in contact with them," said Rosalinda Baldwin, editor of the Auction Guild, a newsletter that covers the online auction industry.

eBay does not list its phone number on its site and recently moved to curtail some of the discussions on its message boards.

eBay representatives did not return calls seeking comment, but a customer service representative, contacted through the company's online chat service, said the new form was meant to help organize customer inquiries.

"We have found that it is very hard to take the e-mails sent in to this address and answer them in a timely fashion. By using the Web form, the e-mails automatically go to the same area, and the Web form also allows us to make sure the e-mails get sent to the appropriate department right away instead of having to rely on a representative to get them there," she said.

eBay is the latest company to try to streamline its customer service operations. Many companies try to categorize the complaints and questions they receive from customers in order to track them and deal with them most efficiently. And, as they have been pressed to post profits, many Web companies such as Amazon.com have cut back on customer service departments or removed toll-free service numbers from their Web pages.

Like Amazon, eBay does not list a customer service number on its Web site, and members have complained about the difficulty of reaching the company.

For some members, those concerns have become more pressing in recent months. eBay has acknowledged that a growing number of member accounts have been hijacked and used to set up fraudulent auctions. Affected customers often want answers immediately and don't want to wait for an e-mail response.

One of the problems with the new form is that for most purposes, customers using it will have to be members of the site and log in to eBay. That could mean that members who have been suspended by eBay or who have had their accounts hijacked may not be able to use the form to report problems.

Baldwin notes that a person who had some property stolen from him and placed for auction on eBay would have no way to contact the company about the problem through its form, except by registering on eBay.

"But what if you don't want to become a member? There has to be a way to contact them without you being a registered member," she said.

Around the time the SafeHarbor e-mail address is cancelled, eBay will have a "workaround" in place that will allow non-members as well as members who have problems accessing their account to contact eBay, the company's customer service representative said. She did not know exactly when the workaround would be in place.

But members point out other problems with using the form. Alan, a Los Angeles resident, said he often reports suspicious activity to eBay. Alan, who asked that his last name not be used, noted that the form has a limited number of categories that members can choose from and doesn't allow members to select more than one violation at a time.

"It's wonderfully simple if you're reporting a single violation," he said. "But most of the time you're trying to report multiple infractions at once."

Additionally, by e-mailing SafeHarbor directly, he's able to keep a copy of his messages and therefore has documentation of past fraud cases. The

new form won’t allow him to have that same documentation, because it doesn’t send a copy of a filed complaint back to the sender, he said.

Alan sees the move to cancel the SafeHarbor addresses as being related to eBay’s recent move to restrict posts on its discussion boards. One of eBay’s new posting rules forbids members from discussing specific fraud incidents or suspicious auctions.

"To me, it is clear that what is happening is a two-pronged attack: Discussion of fraud is being stifled on the boards, while reporting of fraud is being made more difficult," Alan said. "The inevitable result will be greater ignorance among the membership and the public at large about the amount of fraud on eBay, while the fraud will be allowed to spread unchecked."

But member Laurie Jefferson said eBay’s move to use the Web form instead of directing all complaints to the SafeHarbor e-mail address could improve customer service. Jefferson, who lives outside of Boston and has been an eBay member for about a year, said she has often received replies from SafeHarbor that have nothing to do with the inquiries she has sent.

"I’ve found that I rarely get the answers I’m looking for, no matter what I’m reporting or questioning or what the case might be," Jefferson said.

Kazaa Steps Out Of the Shadows

A new candidate to become center of the file-swapping universe has been unveiled: Vanuatu, a small group of Islands in the South Pacific.

That’s where Sharman Networks, the parent company of the hugely popular Kazaa software, is registered to do business, according to Chief Executive Nikki Hemming. After months of speculation about the mysterious file-trading company, Hemming went public with this and other details of her business in a conference call late Tuesday.

Hemming and Sharman control software that has been downloaded more than 60 million times, with more than 1.5 million people using the software on any given day, the company says. Now, with ambitious commercial plans and a lobbying presence in Washington, D.C., Hemming is poised to make a bigger mark on the business of file swapping and digital entertainment than any figure since Napster’s Shawn Fanning.

But to get there, the company will have to wend its way through legal threats from movie studios and record labels, as well as concerns of consumers angry about Kazaa’s policy of bundling software that will use individuals’ computers for other companies’ purposes. On Tuesday, Hemming defended company policies that have drawn criticism from both sides.

"Our primary goal is to deliver quality software to users," she said. "I’m very comfortable that we’ve kept our word to users so far."

The 35-year-old Hemming, a former Virgin Interactive executive who lives in Sydney, Australia, is something of an anomaly in the nearly all-male file-swapping software world. She brings a decade of experience and contacts in the traditional entertainment world to her new company, as well as familiarity with running a fragmented international business.

Hemming was introduced to Kazaa and the world of file swapping by a former business associate, Brilliant Digital Entertainment CEO Kevin Bermeister. Brilliant had been working closely with the group of Netherlands-based programmers that had originally written Kazaa and its underlying peer-to-peer technology and was trying to sell the software.

When a Dutch court ruled in late 2001 that the programmers had to take Kazaa offline, most bidders disappeared. Hemming stayed put, said Niklas Zennstrom, one of Kazaa's original creators.

"We had some other offers and discussions during the year," Zennstrom wrote in an e-mail interview. "(After the court ruling) the other potential buyers had withdrawn, but Sharman was still interested, so we sold it to them."

As the new owners of a piece of software that had been downloaded over 30 million times by the beginning of March, Sharman was instantly a name to be reckoned with online. But Hemming declined to give interviews. Reporters and copyright authorities couldn't even find a record of the company registered in Australia, Hemming's home.

Hemming finally answered some-- if not all--of those questions on Tuesday. Sharman itself is registered for tax reasons in Vanuatu, an island nation that advertises itself on its Web site as "The South Pacific's premiere tax haven." Day-to-day operations are conducted in Sydney by an affiliated management company, she said.

According to the company's terms of service, it can be sued in Australia, which has copyright laws similar to those in the United States.

Sharman is funded by a group of private individual investors who wish to remain anonymous, Hemming said.

Rumors have floated for months, spurred by a note in the company's terms of service, that Kazaa would soon start charging for its service. Hemming said that she intended to keep the basic Kazaa service free, but would later introduce a premium service with new features. The company already has a deal with DoubleClick to serve ads through the Kazaa software, she noted.

Sharman is the largest peer-to-peer company that hasn't been sued by recording companies or movie studios. Kazaa BV, the Dutch company that sold Sharman its software, is still being sued. StreamCast Networks and Grokster, two companies that initially shared the Dutch file-swapping technology, also are being sued.

A Dutch appeals court ruled last month that the owners of the Kazaa software weren't liable for the actions of people using the software to trade copyrighted works illegally. That ruling doesn't hold immediate value as precedent in United States courts, however.

Australian copyright authorities have previously said they were investigating Sharman, but were not able to find records of the company's existence. Now they're mum on their plans, but say they're still looking.

"They are still a matter of interest to the anti-piracy unit," said Michael Speck, head of the Australian Record Industry Association's (ARIA) anti-piracy division, in an e-mail to News.com. "The unit down here has...zero tolerance (toward) piracy, and any piracy identified in this territory is dealt with according to the available resources."

The Recording Industry Association of America (RIAA) declined to comment directly on Sharman for this article.

Even while scrutiny from copyright holders has tightened, Hemming has tapped into some deep consumer fears about privacy and loss of control of their own computers. For the last two weeks, Sharman has been trying to assuage consumers' concerns about Brilliant Digital Entertainment's Altnet, which will use consumers' PCs in a new commercial peer-to-peer network. Altnet is installed with every copy of Kazaa.

Hemming said that Kazaa has changed its policies to ensure that no personally identifiable information is collected by any of the company's partners, and that all companies--including Brilliant and Altnet--communicate directly with consumers about what will happen to individuals' computers.

"Look, I've got the most powerful brand in the market right now," Hemming said. "I'm not about to put this brand into any risk whatsoever by making a hasty discussion on partnerships."

Some online file swappers are taking matters into their own hands. A hacked version of Kazaa stripped of Brilliant and other companies' advertising software has begun circulating online. Sharman has persuaded Download.com, a popular software aggregation site operated by News.com publisher CNET Networks, to remove that software program from its database, but it is still readily available elsewhere. She said the companies' attorneys are in the process of issuing cease-and-desist orders to the distributors and creators of that software.

Kazaa itself was removed from Download.com's directory after Altnet's software was revealed, but it had reappeared by Monday.

Hemming is moving ahead quickly despite the skirmishes on both flanks, however. Sharman's lobbyist in the United States has been speaking to musicians' groups and hardware companies about a new plan for paying content owners. The company also is hoping to win Internet service providers and telecommunications companies as allies, arguing that file swapping will help persuade people to sign up for broadband service.

"It's pretty clear that we have a way to play the part of being the driver in this market," Hemming told reporters Tuesday. "Why not be the visionary. Why not be the driver?"

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